APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,743	07/03/2001	Krassen Dimitrov	P-IS 4548	3666

23601   7590   10/08/2002

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EXAMINER
CHUNDURU, SURYAPRABHA

ART UNIT	PAPER NUMBER
1637	

DATE MAILED: 10/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 07-01)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _1_ MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _03 July 2000_ .

2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-84_ is/are pending in the application.

　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☐ Claim(s) _____ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☒ Claim(s) _1-84_ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

　If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　a) ☐ All b) ☐ Some * c) ☐ None of:

　　1. ☐ Certified copies of the priority documents have been received.

　　2. ☐ Certified copies of the priority documents have been received in Application No. _____ .

　　3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
　　　application from the International Bureau (PCT Rule 17.2(a)).

　* See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

　a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .

4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

DETAILED ACTION

Restriction/Election

1.   Restriction to one of the following inventions is required under 35 U.S.C. 121:

I.   Claims 1-15, and 78-84 drawn to a diverse populations of labels, and a labeling kit,

classified in class 536, subclass 25.32.

II.   Claim 23-33, drawn to a method of attaching a label to a nucleic acid, classified in class

435, subclass 7.7.

III. Claims 16-22, and 34-49, drawn to a method of producing a population of labels and nucleic

acid probes, classified in class 536, subclass 26.41.

IV.   Claims 50-77, drawn to a method of detecting a nucleic acid analyte, classified in class

435, subclass 6.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and IV are related as product and process of use. The inventions can be shown

to be distinct if either or both of the following can be shown: (1) the process for using the

product as claimed can be practiced with another materially different product or (2) the product

as claimed can be used in a materially different process of using that product (MPEP

§ 806.05(h)). In the instant case the product of Group I can be used in materially different

processes such as nucleic acid purification assays and cloning assays.

Inventions I and III are related as process of making and product made. The inventions are

distinct if either or both of the following can be shown: (1) that the process as claimed can be

used to make other and materially different product or (2) that the product as claimed can be

made by another and materially different process (MPEP § 806.05(f)). In the instant case the

product of Group I can be used in materially different processes such as nucleic acid purification

assays and cloning assays.

Inventions II and III-IV are unrelated. Inventions are unrelated if it can be shown that

they are not disclosed as capable of use together and they have different modes of operation,

different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the

different inventions because the methods of Groups II and III have different modes of operation

and different functions, for instance method of Group II results in chemical linkage of a label and

the method of Group III produces a product, and the method of Group IV results in detecting a

target.

3.   Because these inventions are distinct for the reasons given above and have acquired a

separate status in the art as shown by their different classification and divergent subject matter,

restriction for examination purposes as indicated is proper.

4.   Applicant is reminded that upon the cancellation of claims to a non-elected invention, the

inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the

currently named inventors is no longer an inventor of at least one claim remaining in the

application. Any amendment of inventorship must be accompanied by a petition under 37

CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Suryaprabha Chunduru whose telephone number is 703-305-

1004. The examiner can normally be reached on 8.30A.M. - 4.30P.M, Mon - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Gary Benzion reached on 703-308-1119. The fax phone numbers for the organization

where this application or proceeding is assigned are 703-305-3014 for regular communications

and - for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding

should be directed to the receptionist whose telephone number is 703-308-0196.

Suryaprabha Chunduru
September 22, 2002

JEFFREY FREDMAN
PRIMARY EXAMINER